

TESTIMONY OF GREG BAFALIS
PRESIDENT AND CEO, GREEN EARTH FUELS
BEFORE THE HOUSE SMALL BUSINESS COMMITTEE
MAY 21, 2009

Thank you Madam Chairman.

My name is Greg Bafalis, and I am President and CEO of Green Earth Fuels. Green Earth Fuels is based in Houston, Texas and is currently the largest independent producer of biodiesel in the United States. I am here today to ask for your assistance to save the biodiesel industry. We have worked very hard over the last three years to create a successful business. We started in January of 2006 and grew the company to 70 employees. Green Earth Fuels has done many things right: we have entered into competitive contracts for feedstocks, we have employed strict risk management policies, strived for and invested in feedstock diversification, located on the Houston Ship Channel to lower transportation expenses, positioned ourselves to seamlessly integrate into the existing petroleum market and always delivered high quality product to our customers. In addition we were very progressive and invested in new sustainable feedstock's to increase our supplies in a way that minimize any adverse impact on the food supply.

Despite taking these prudent steps in building our business, larger economic, market and political forces have combined to cripple us and the entire U.S. biodiesel industry. If a company like Green Earth Fuels is about to fail then I believe the rest of the independent small business biodiesel industry will also fail. To exacerbate a bad situation with such a fragile industry in a downturned economy the issuance by EPA of the draft Renewable Fuel Standard (RFS) rules, if implemented, will drive the last nail in the American biodiesel industry. Nationwide, 29,000 jobs and billions of dollars in investment will be lost and never recovered if the current situation is not remedied now.

While I want to focus the majority of my remarks on what I believe the Federal government must do to ensure that a U.S. biodiesel industry survives and thrives, I want to spend

a few moments providing an overview for the committee with respect to what has transpired over the past year to cripple the industry.

First, the economic downturn has had a dramatic impact on the industry. This is a young industry that relies on investment and ample working capital to establish itself. Like many emerging industries, our industry is feeling the effects of frozen capital markets.

Second, the market for biodiesel is shrinking. The U.S. biodiesel industry has had to rely on a robust European market while we attempt to build domestic demand and infrastructure. The European Union has recently enacted protectionist measures that all but close the market to U.S. producers. Without the implementation of the RFS-2 in 2009 a very small market will exist and further investment in the industry and required infrastructure is in peril.

Third, the Congress has yet to commit to long term support for the industry. As a young industry, biodiesel requires a \$1.00 per gallon tax rebate to be competitive with petroleum diesel. That tax credit expires at the end of this year. Congress, as part of the stimulus bill that passed earlier this year, enacted long term extensions for the renewable electricity and other clean energy tax credits. They did not extend the biodiesel tax credit. Investors, lenders and customers want to know that this industry is here for the long term. These year to year extensions create even more uncertainty in uncertain times, and have the effect of driving away customers and capital investment.

Finally, the Environmental Protection Agency will have taken nearly two and a half years to issue proposed rules to the 2007 changes to the renewable fuel standard, and has done so now in a manner that eliminates the vast majority of feedstocks available in the United States by imposing speculative criteria for evaluating the greenhouse gas emission reductions of renewable fuels. This rule, once thought to be the savior of our industry because of the dedicated mandate for biodiesel, may now be our ruin because of EPA's recommendation that international indirect land use change impacts be incorporated into the carbon life cycle analysis of renewable fuels. EPA's initial modeling suggests that biodiesel produced from vegetable oils falls short of the 50 percent greenhouse gas reduction threshold established under the new law when one considers these indirect land use impacts.

The net effect of these events is the contraction of the U.S. biodiesel industry. The U.S. biodiesel industry produced 700 million gallons in 2008. It is now on schedule to produce less than half that amount in 2009 not through lack of production capacity but through delays in RFS implementation and investment incentives. Remember that these same producers and investors will consider the state of first generation biofuels before committing their resources to the next generation. Support trumps rhetoric. We need Congress to provide clarity, certainty and longevity to our industry.

In short, despite potential for our industry, and some of the positive steps Congress and the President have taken to promote the industry, the world economic crisis and an uncertain regulatory climate are threatening our industry and the future of renewable fuels! If biodiesel fails it will cost the investment community billions of dollars and send a clear signal to these investors that government support for alternative fuels is suspect and “not bankable.” If you, as an investor, just lost billions on biodiesel, would you ask your Board of Directors for billions more for second generation biofuels? And there is another factor to consider, the intellectual talent. If the industry fails, in part due to a changing or variable regulatory climate, the people with the expertise most needed to lead the development of next generation fuels will likely leave the industry, never to return. First generation Biodiesel may not be the perfect solution to our nations environmental and energy challenges, but it is a valuable start. The knowledge we are gaining by operating and developing improvements shows tremendous potential for it to become better, and its success paints a picture for the next generation of entrepreneurs. In addition, if the lack of investment today means the loss of biodiesel infrastructure now then today’s infrastructure will not be there to support other emerging alternative fuels tomorrow.

So, what does our industry need from the Federal Government to succeed? We don’t need a bailout but we do need help. Congress and this Administration can help this industry stay on its feet and help meet our future energy and climate challenges by doing the following:

- We need a market for our product now. The major oil companies in the energy industry will not make the infrastructure investment to certify, use and transport biodiesel nor will they buy it without the surety that the product will be available in quantity and quality and that the rules have clarity and certainty. The assistance we are asking for is the first

in justifying investment by major energy companies. The draft EPA regulations on the RFS push the original biodiesel mandate back from 2009, as originally required by Congress, to 2010. This delay is devastating to the industry. Any further delay in establishing a U.S. mandated market for biodiesel will kill the industry. Production is already down an estimated 300 million gallons for 2009 and that may be an overly optimistic projection. We have clearly been told by the major oil companies that they will not buy biodiesel until they know what the rules are in the RFS. Therefore, the EPA must enact final rules to the RFS without any delay so that the biodiesel mandate is in full effect for all of 2010.

- This industry also needs the certainty and stability in federal policies. Congress recognized the importance of providing long term certainty to the renewable electricity industry when it enacted long term tax credit extensions as part of the economic stimulus legislation earlier this year. The biodiesel industry relies on a \$1.00 per gallon production tax credit which expires at the end of this year. The industry needs a long term extension of this credit in order to restore investor confidence and provide the industry with stability. Congress needs to act immediately to extend this credit and should do so for a period of five years.
- The Administration can further grow the market by issuing an executive order directing all Federal agencies to buy domestically produced biodiesel offered within an established price range that allows producers to cover their costs and stay in operation. This could of course include Federal funded activities under the stimulus package for construction and other activities.
- Require the U.S. Department of Agriculture to invest in research and development in energy feedstock diversification for biodiesel. Green Earth Fuels currently uses feedstocks like soybeans, animal grease and palm oil to produce fuel, but we believe the future lies in environmentally sustainable, high value energy crops like camelina. and jatropha We have formed a joint venture, Sustainable Oils, to ramp up commercial camelina production in the Northern Plains States, including Montana, North Dakota and Minnesota. We are expanding this development to arid marginal areas like the Southwest (New Mexico), and beyond. We have rehabilitated an idle coffee plantation in Guatemala and are growing jatropha. The Department of Agriculture needs to get programs like

the Biomass Crop Assistance Program up and running to help build out these sorts of efforts.

- We need the Transportation Department and FERC to issue regulations allowing biodiesel into the pipeline system of this country. This will greatly reduce distribution costs and make it easier for biodiesel to integrate into the petroleum infrastructure. We know it can be done since it is already happening in Europe.
- Finally, we need the RFS to accurately evaluate the greenhouse gas emission profiles of renewable fuels. While we understand the importance, we believe that the current calculation of the impact that the biofuels industry will have on indirect land use change is speculative at best. Adding a further measure of “International” indirect land use change singles out this industry and penalizes US companies for bad land use practices of other countries. You simply cannot conclude that the sustainable cultivation of soybeans or camelina in the United States will result in widespread forest conversion in the Amazon Basin. I lived in Brazil for 7 years and forest conversion was well underway before the US biodiesel industry was created. We urge this Committee to closely follow the EPA rulemaking on the RFS and exercise its oversight to ensure that a final rule is not issued that uses dubious science and controversial modeling to unfairly penalize vegetable oil derived biodiesel.

In closing, thank you for allowing me to make my case for the biodiesel industry. I am aware that this Committee has for a number of years been supportive of the biodiesel industry and done much to advance our cause and that you are already aware of many of these issues. In fact this is the only committee of Congress that has held independent hearings on just the biodiesel industry. The men and women who are building Green Earth Fuels – and our entire independent domestic biofuels industry - do so because we believe biodiesel offers an environmentally sustainable solution to our nation’s energy challenge. Given the policy tools recommended in my testimony I believe that we will be able to weather these economically challenging times and emerge a stronger industry that is here to stay.